

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
(EAST ST. LOUIS DIVISION)**

**MICHAEL KELLY, as Administrator of the Estate
of EVERETT KELLY, deceased, and Patti Kelly**

Plaintiffs,

vs.

Cause No. 05-409-DRH

**MARTIN & BAYLEY, INC., d/b/a
HUCK'S CONVENIENCE STORE, and
PHILIP MORRIS USA, INC.**

Defendants.

ORDER

On January 9, 2005, this Court entered its Memorandum and Order (Doc. 23) denying Plaintiffs' Motion to Remand and finding that removal was proper under the "federal officer" removal statute, 28 U.S.C. § 1442(a). Plaintiffs now ask this Court to certify this question for appeal pursuant to 28 U.S.C. § 1292(b).

Having considered Plaintiffs' Petition for an Order of Immediate Appeal and the briefing of the parties, the Court hereby finds that the question presented is a controlling question of law, which is contestable and the resolution of which will speed up the litigation of this case. Thus, the Court hereby grants Plaintiffs' Petition and certifies for appeal the following question:

Whether Philip Morris may remove this case to federal court under 28 U.S.C. § 1442(a) based on the Federal Trade Commission's regulation of cigarette testing and advertising.

Moreover, because the resolution of this question will determine

whether this Court has subject matter jurisdiction over this matter, the Court finds it unwise to expend anymore of the resources of this Court or the parties on this case until the question has been decided. Wherefore, the Court orders of a stay of these proceedings pending the Court of Appeals' resolution of the question certified.

IT IS SO ORDERED.

Signed this 6th day of February, 2006.

/s/ David RHerndon
United States District Judge